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AND WHEN RECORDED RETURN TO:

Pacific Gas and Electric Company  
Corporate Real Estate Department  
Property Planning and Transactions  
Attn: Susan Wooten  
245 Market Street, Mail Code N10A  
San Francisco, California 94105  
Telephone: (415) 973-0745

Recorded in Official Records, Madera County

**REBECCA MARTINEZ**

Madera County Recorder

P Public

10/02/2003

10:33 AM

JE

Doc#: 2003041317



Titles: 1 Pages: 14

Fees	46.00
Taxes	0.00
Other	0.00
PAID	\$46.00

(Space Above For Recorder's Use)

**COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY**

APN 799-000-001

309 South Gateway Drive  
Madera, California 93637

*This instrument is an environmental restriction  
pursuant to California Civil Code Section 1471*

RECEIVED

OCT 24 2003

RW000-DVR  
FRESNO, CALIF

THIS COVENANT AND AGREEMENT (this "Covenant") is made as of the 24<sup>th</sup> day of September, 2003 by Pacific Gas and Electric Company, a California Corporation ("Covenantor"), and California Regional Water Quality Control Board, Central Valley Region, a California Public Agency ("Covenantee"), with reference to the following facts:

A. Covenantor is the owner of real property described more particularly in Exhibit A attached hereto (the "Property").

B. Past industrial and manufacturing operations conducted at the Property by Covenantor and its predecessors-in-interest resulted in the release of certain contaminants into the soil and groundwater.

C. The Property is rectangular in shape (approximately 575 feet by 155 feet), is divided by a canal, which traverses the Property in a northeast to southwest direction. Historic aerial photographs show the portion southeast of the canal as vacant, undeveloped and unimproved. The portion northwest of the canal is developed and paved. Pacific Gas and Electric Company (PG&E) used the northwest portion as a customer service center, parking lot, operations yard, pole yard storage area, hazardous waste accumulation area, and transformer

storage area. A structure in the northwest portion served as a customer service center and warehouse facility and a second smaller structure was used as a shop and for storage. A third small outbuilding housed a gasoline dispenser fuel island for the adjacent 2000-gallon Underground Storage Tank (UST). The UST was removed in 1992 concurrent with the demolition of this outbuilding structure under the oversight of Madera County Department of Environmental Health (MCDEH).

Past PG&E activities included routine vehicle maintenance, vehicle and electrical equipment storage, parts storage and administration. New or reconditioned electrical equipment was periodically stored on two concrete pads located at the southeast and southwest boundaries of the operation yard. The following report document past site use, activities and the UST removal and closure:

*The Twining Laboratories. 1993. Phase I Environmental Site Assessment, Former Pacific Gas and Electric Customer Service Center, 309 South Gateway Drive, Madera, California. November 30.*

D. A Phase II Environmental Site Assessment was conducted in 1999 under the oversight of MCDEH. In total, 26 soil samples were collected from locations throughout the site and one grab groundwater sample was collected from adjacent to the canal. The investigation revealed elevated concentrations of TEPH-mineral oil from soil samples directly adjacent to the former transformer storage area. The following report fully describes this investigation:

*Secor International. 1999a. Results of Phase II Environmental Site Assessment, Soil and Groundwater Sampling, Former Pacific Gas and Electric Company Former Service Center, 309 South Gateway Drive, Madera, California. August 17.*

E. TEPH-mineral oil affected soils adjacent to the former transformer storage pad area were excavated in 1999. The excavation limits extended 47 feet long by 5 feet wide and 3 feet deep, directly east of the concrete pad. Soil samples taken from the base of the excavation identified TEPH-mineral oil remaining in the soil. Subsequent to the excavation, additional soil samples were analyzed from borings up to 15 feet below ground surface in the vicinity of the excavation and analyzed for TEPH-mineral oil, Benzene, Toluene, Ethylbenzene, and Xylenes (BTEX), and Polychlorinated Byphenyls (PCBs), of which 21 samples had detections of mineral oil and twelve had trace detection of PCBs below both the state and federal clean up goals. The maximum concentration of 9,000 milligrams per kilogram (mg/kg) of TEPH-mineral oil was present in a sample from 5 feet below ground surface in boring B-2. BTEX were not detected in any of the soil samples.

Groundwater well MW-1 was installed in the vicinity of boring B-2 to monitor the area adjacent the former concrete pad. During the monitoring well installation, soil samples were collected at 20 and 24 feet below ground surface. TEPH-mineral oil results for these samples show

concentrations in soil decline to trace levels and PCBs were not present in soil below 20 feet below ground surface. The results of this investigation are described in the following reports:

*Secor International. 2000a. Excavation and Subsurface Investigation Report, Former PG&E Service Center, 309 South Gateway Drive, Madera, California. April 6.*

*Secor International. 2000b. Monitoring Well Installation Report, Former Transformer Storage Area, Former PG&E Service Center, 309 South Gateway Drive, Madera, California. May 15.*

F. Upon discovery of separate phase product in well MW-1, the lead agency oversight was transferred from MCDEH to the Central Valley Regional Water Quality Control Board (CVRWQCB). Analysis of the product indicated the material was mineral oil containing PCBs. Periodic oil recovery was initiated and in December 2000 and January 2001, five additional wells (R1 through R5) were installed to monitor the groundwater and extract separate phase product, if needed.

Additionally, soil and near surface soil and sediment samples were collected from the irrigation canal and analyzed for TEPH-diesel, TEPH-motor oil, TEPH-mineral oil, and PCBs. Results of the canal sampling showed PCBs were not detected, TEPH-mineral oil was detected in four samples collected one foot from the canal bank, TEPH-diesel was detected in eleven canal samples and TEPH-motor oil was detected in seven samples. Highest concentrations of TEPH-diesel and TEPH-motor oil were reported in canal surface samples, and appeared to be randomly distributed along the canal and in the canal sediment upstream of the site. Canal water sampling was conducted in 2001 during two sampling events. Results showed that TEPH-motor oil and TEPH-diesel were detected in canal water but TEPH-mineral oil was not detected in canal water. Results of this work can be found in the following reports:

*Secor International. 2001a. Quarterly Report of Oil Recovery, Groundwater Monitoring Well Sampling, and Canal Sampling, Former PG&E Service Center, 309 South Gateway Drive, Madera, California. September 12.*

*Secor International. 2001b. Soil Sampling and Recovery well Installation and Sampling Report, Former PG&E Service Center, 309 South Gateway Drive, Madera, California. February 27.*

G. Groundwater wells R1 through R5 have been periodically monitored since February 2001 and sampled for TEPH-mineral oil and PCBs. PCBs have never been detected in these wells. TEPH-mineral oil has been detected in wells R1, R4, and R5. In August and January 2002, laboratory analysis confirmed through advanced fingerprinting techniques that an unknown hydrocarbon in the diesel range is also present in the groundwater wells. It has been detected in wells R1, R2, R4, and R5, and its source is unknown.

Separate phase product has been removed from well MW-1, and since November 2001, only a sheen or discontinuous sheen has been observed in MW-1. Results of the groundwater monitoring program and fingerprinting work can be found in the following reports:

*Secor International. 2002a. 2001 Annual Report of Canal Surface Water Monitoring, Oil Recovery, and Groundwater Monitoring Well Installation and Sampling, Former PG&E Service Center, 309 South Gateway Drive, Madera, California. May 16.*

*Secor International. 2002b. Remediation, Groundwater Sampling, and Hydrogeologic Characterization Report, Former PG&E Service Center, 309 South Gateway Drive, Madera, California. November 15.*

*Secor International. 2003. Results of Additional Site Characterization/Remediation Activities and Recommendations for Further Actions, Former PG&E Service Center, 309 South Gateway Drive, Madera, California. April 16.*

H. In order to protect present and future public health and safety, Covenantor desires and intends to ensure that the Property is used in a manner that avoids potential harm to persons, the environment or property which may result from the presence of contaminants on the Property.

I. This Covenant is given to bind Covenantor and successive owners of the Property to restrictions on the future use of the Property, which restrictions are for the benefit of the Covenantee.

## ARTICLE 1 GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective covenants, conditions and restrictions ("Restrictions"), upon and subject to which the Property and every portion thereof shall be held, used, improved, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Restrictions shall run with the Property, and shall apply to and bind Covenantor and all successors in interest therein. The Restrictions are imposed upon the entire Property except as otherwise expressly stated herein.

1.2 Deemed Concurrence. All persons or entities acquiring any interest in the Property or any portion thereof shall be conclusively deemed by such acquisition, lease or possession to have irrevocably agreed to the Restrictions for and among themselves and their heirs, successors, assignees, agents, employees, licensees and lessees, and the agents, employees, licensees and lessees of such owners, heirs, successors, and assignees. In the event an owner of all or a portion of the Property (including Covenantor) conveys fee title to some portions of the Property to third parties but retains an interest in other portions of the Property, upon the conveyance of the portion(s) of the Property to third parties, the conveying owner shall forever be released and

relieved of any further obligation or liability under the Covenant with respect to the portion of the Property so conveyed for events arising from and after the date of such transfer. Upon any owner's sale or transfer of its entire interest in the Property, such conveying owner (including Covenantor) shall forever be released and relieved of any further obligation or liability arising under this Covenant for events arising from and after the date of such transfer. Upon the termination of the leasehold interest of any occupant of the Property, such occupant shall forever be relieved of any further obligation or liability thereafter arising under this Covenant.

Nothing in this section shall prohibit or otherwise limit the Board from asserting that Covenantor remains responsible for remediation of the Property under applicable laws, or regulations subsequent to the conveyance of Property or portions of the Property to a third party. Covenantor's responsibility under this section shall not include any obligation to enforce use restrictions at the Property or portion of the Property subsequent to its conveyance to a third party. The obligation and responsibility to comply with and enforce the use restrictions shall be transferred to said third party.

1.3 Incorporation into Deeds and Leases. The Restrictions are hereby deemed to be incorporated by reference into each grant, creation or conveyance of any interest in the Property or portion thereof occurring after the date this instrument is recorded in the Official Records of Madera County, California, whether or not referred to in the instrument effecting such grant, creation or conveyance.

1.4 Availability of Environmental Reports. Environmental Reports concerning monitoring, testing, investigation and remediation of the Property, including those environmental reports referenced above, are available for review at the RWQCB, at the address indicated below.

## ARTICLE 2 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

2.1 Restrictions on Use. Covenantor shall restrict the use of the Property as follows:

No owner or occupant of this Property or any other party having custody or control of this Property shall build any of the following structures on the Property: (a) a residence or residences, (b) hospital for humans, (c) a school for persons under 21 years of age, (d) a day care center for children, and (e) any permanently occupied human habitation (including hotels and motels, which are used as permanent residences; hotels, motels, and temporary lodging facilities, which allow for temporary and/or extended stays are permitted), unless such person has first obtained written



consent in each instance from the Central Valley Regional Water Quality Control Board. The Property, or any portion thereof, may be used for commercial, retail (including restaurants and service stations), office, industrial or other business purposes, without the written consent of the Central Valley Regional Water Quality Control Board.

No owner or occupant of this Property or any other party having custody or control of this Property by any means shall excavate, grade, dig, drill or bore the soils in, on or under the Property, unless such person has first obtained written consent in each instance from the Central Valley Regional Water Quality Control Board.

2.2 Notice in Agreements. Covenantor shall include in all deeds, leases or licenses of any portion of the Property the following statement:

"The [sold/leased/licensed] property is subject to a use limitation based on past environmental contamination of a portion of the property. While that contamination has been substantially remediated, to protect public health and safety, the property is subject to a covenant that runs with the land, which restricts the use of the property. The Central Valley Regional Water Quality Control Board is the Covenantee of this covenant. This statement is not a declaration that a hazard exists at the property."

### ARTICLE 3 ENFORCEMENT AND MORTGAGEE PROTECTION

3.1 Enforcement. This Covenant is entered into for the express benefit of Covenantee. Covenantor and/or Covenantee may enforce this Covenant or recover any and all damages recoverable under applicable law for breach in an action at law or in equity.

3.2 Mortgagee Protection. Notwithstanding any provision of this Covenant, no breach of the Restrictions, nor the enforcement of any provisions contained in this Covenant shall affect, impair or defeat the lien or charge of any duly recorded mortgage or deed of trust encumbering any portion of the Property, or affect, impair, or defeat the interest of the mortgagee, or its successors or assigns (the "Mortgagee") pursuant to such a mortgage, provided that such mortgage is made in good faith and for value. All of the Restrictions shall be binding upon and effective against any owners whose title is derived through foreclosure, deed in lieu of foreclosure, or trustee's sale during the period of their ownership.

ARTICLE 4  
VARIANCE AND TERMINATION

4.1 Variance. Covenantor, or any other owner of the Property or any portion thereof, may apply to Covenantee for a written variance from or modification of this Covenant. Covenantee's consent thereto shall not be unreasonably withheld.

4.2 Termination. Covenantor, or any other owner of the Property or any portion thereof or, with Covenantor's consent, any occupant of the Property, may apply to Covenantee for a termination of the Restrictions as they apply to all or any portion of the Property owned or occupied by the applicant. Covenantee's consent thereto shall not be unreasonably withheld.

4.3 Term. Unless modified or terminated in accordance with this Article or by Section 5.5 below, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE 5  
MISCELLANEOUS

5.1 No Dedication Intended. Nothing herein shall be construed to be a grant or dedication, or offer to grant or dedicate, the Property or any portion thereof to the public for any purposes whatsoever.

5.2 Notices. All notices, demands, requests, consents, approvals, waivers, releases, modifications, terminations or other communications relating to this Covenant shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served or official of a government agency being served, or 2) three business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To Covenantor:

Pacific Gas and Electric Company  
Vice President – General Services  
Attn: Ms. Linda Chinn  
245 Market Street, Mail Code N10A  
San Francisco, California 94105

With a required  
copy to:

Pacific Gas and Electric Company  
Law Department  
77 Beale Street, Mail Code B30A  
San Francisco, California 94105  
Attn: Juan M. Jayo, Esq.  
(Mailing address: P.O. Box 7442, Mail Code B30A)

San Francisco, California 94120)

To Covenantee:

California Regional Water Quality Control Board,  
Central Valley Region  
Attn: Mr. Jong Y. Han, R.G., C.E.G.  
1685 E Street  
Fresno, California 93706-2020

Any party may change its address by notice to the other parties as provided above.

5.3 Partial Invalidity. If any portion of the Covenant is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not part of the Covenant.

5.5 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, except as provided in Article 1.2. If the jurisdiction of the Covenantee over environmental matters relating to the Property is at any time delegated to a different governmental agency, such agency shall succeed to the Covenantee's rights hereunder. If at any time no governmental agency has jurisdiction over environmental matters relating to the Property, this Covenant shall thereafter be of no further force or effect. As used herein, the terms Covenantor and Covenantee shall include their successors and assigns.

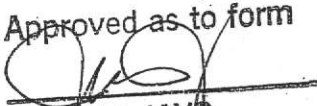
5.6 Complete Agreement. This Covenant evidences the complete agreement among the Covenantee and the Covenantor, and supersedes all prior offers, contracts, agreements and arrangements between the parties concerning the Property. Except as provided in Article 4, this Covenant may not be changed, modified or rescinded except in a writing, that is recorded in the official records of Madera County, and which is signed and acknowledged by Covenantee and the party owning the portion of the Property as to which such change, modification or rescission will apply, and any attempt at actual or oral modification shall be void and of no effect.

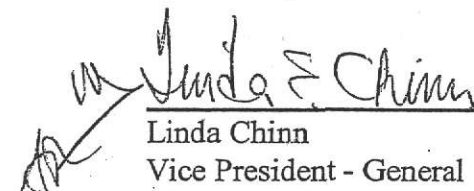
5.7 Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute but one and the same Covenant.



IN WITNESS WHEREOF, Covenantor and Covenantee have executed this Covenant as of the date set forth above.

Approved as to form

  
JUAN M. JAYO  
PG&E Law Dept.

  
Linda Chinn

Vice President - General Services  
Pacific Gas and Electric Company

9/24/03

date

  
Frances McChesney

Senior Staff Council

State Water Resources Control Board

9/16/03

9/4/03

date

P.G.&E. CO.  
COPY

**Exhibit A**

## Description

### Parcel 1:

A lot in the Northeast quarter of the Southeast quarter of Section 24, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, in Hughes Addition to the Town (now City of Madera, according to map entitled, "Map of Lankershim Colony and Addition to the Town of Madera", according to the map thereof recorded February 5, 1989, in Volume 4 Page 31 of Maps, Fresno County Records, bounded and described as follows:

Commencing at a point on the Northeasterly side of "F" Street in said Hughes Addition to the City of Madera, which point of commencement is the most Westerly corner of the property now owned by the San Joaquin Light and Power Corporation, said corner and point of commencement is described as follows:

A point 373 feet Northwesterly of the point of intersection of the Southwesterly line of Eight Street if extended to intersect with the Northeasterly line of "F" Street; thence continuing along said Northeast line of "F" Street from said point of commencement a distance of 100 feet to a point; thence at right angles and in a Northeasterly direction to a point on a Southwesterly line of the right of way of a spur tract of Southern Pacific Railroad Company; thence in a Southeasterly direction along said line of said spur tract to the point where said line of said spur tract intersects the Southwesterly line of the main right of way of said Southern Pacific Railroad Company; thence continuing in a Northeasterly direction along said line of said main right of way of said Railroad Company a distance of 26.17 feet, more or less, to the most Northerly corner of the property now owned by the San Joaquin Light and Power Corporation; thence at right angles in a Southwesterly direction along the Northwesterly end of the property now owned by the San Joaquin Light and Power Corporation a distance of 150 feet, more or less, to the point of commencement.

### Parcel 2:

Commencing at a point on the Northeast side line of "F" Street, in Hughes Addition to the Town of Madera, where the Southeast side line of 8<sup>th</sup> Street of said Addition if extended would intersect said Northeast side line of said "F" Street, being 80 feet from the North corner of Block 3 of said Hughes Addition to the said Town of Madera; thence running in a Northwesterly direction along said Northeast side line of said "F" Street 373 feet to the fence of the S.P.R.R.; thence turning to right angles and running in a Northeasterly direction 155 feet to the Southwest side line of the S.P.R.R. right of way; thence turning at right angles and running in a Southeasterly direction along said Southwesterly side line of said S.P.R.R. right of way 475 feet; thence at right angles and running in Southwesterly direction to the Northeasterly side line of said "F" Street in said Hughes Addition, a distance of 155 feet; thence turning at right angles and

running in a Northwesterly direction along the Northeast side line of said "F" Street 102 feet to the point of commencement, being a strip of land 475 feet by 155 feet in the Northeast quarter of the Southeast quarter of Section 24, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, adjacent to the S.P.R.R. Co's right of way on the Southwest line thereof in said Hughes Addition to the Town of Madera, according to the map of said Hughes Addition entitled "Map of Lankership Colony and Addition to the Town of Madera," filed and recorded in the office of the County Recorder of the County of Fresno, State of California, February 5, 1989, in Volume 4 Page 11 of Maps.

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SACRAMENTO

} ss.

On SEPT. 16, 2003, before me, RONI DICKERSON, Notary Public

Date

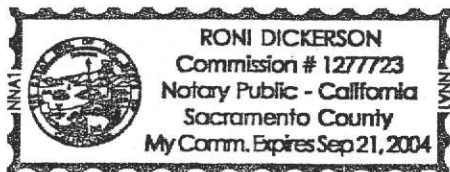
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared M. CATHERINE GEORGE

Name(s) of Signer(s)

- ☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Roni Dickerson  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

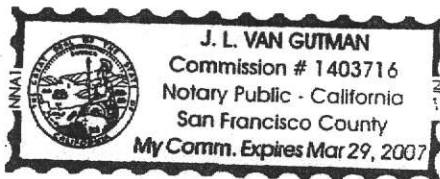
State of California

County of San Francisco

On September 24, 2003 before me, J. L. Van Gutman  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Linda E. Chinn  
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

- TITLE(S)  
☐ PARTNER(S) ☐ LIMITED  
☐ ATTORNEY-IN-FACT ☐ GENERAL  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

### DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT  
\_\_\_\_\_  
NUMBER OF PAGES  
\_\_\_\_\_  
DATE OF DOCUMENT  
\_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE  
\_\_\_\_\_